

MINUTES

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Wednesday, May 1, 2002

Division One

**A098112 -- In re Marriage of Debara J. Lutkenhouse and Reza Eslaminia, Debara J. Lutkenhouse v. Reza Eslaminia..**

By the Court: On the court's own motion, the appeal is dismissed because the challenged judgment on reserved issues is not appealable because it was consensual and appeal is untimely as to the severed termination of marital status. (See order.) Marchiano, P.J.

**A098425 -- In re Christopher T., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Teresa T.**  
By the Court: On the court's own motion, the purported appeal herein is dismissed. (See order.) Marchiano, P.J.

**A097679 -- Marcus W. v. The Superior Court of San Francisco County; The People, R.P.I.**

Let a peremptory writ of mandate issue commanding the San Francisco Superior Court, Juvenile Division, to vacate its order of November 30, 2001 in *In re Marcus W.*, a Minor (No. JW 99-6411) finding Marcus W. not a fit and proper subject to be dealt with under the juvenile court law, and thereafter to conduct a new fitness hearing. (§ 707, subd. (c).) The stay previously imposed shall remain in effect until the remittitur issues. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication.)

Division Two

**A095682 -- The People v. Don R. Diaz.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

MINUTES

Wednesday, May 1, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan J., Parrilli, J., and I. Calanoc, Deputy Clerk.

- A093650      Jo Kinsman,  
                  v.  
                  Fluor Corporation.  
Cause called and argued by Harry Wartnick, counsel for appellant, and William Buranich, counsel for respondent. Cause ordered submitted.
- A093427      Insurance Commissioner of the  
                  State of California,  
                  v.  
                  Golden Eagle Insurance Company;  
                  Aero-Crete, Inc.  
Cause called and argued by Timothy Gonzales, counsel for appellant, and Joseph Oliva, counsel for respondent. Cause ordered submitted.
- A093546      Insurance Commissioner of the  
                  State of California,  
                  v.  
                  Golden Eagle Insurance Company;  
                  Barry and Sandra Erlich.  
Panel for this case is comprised of Pollak, J., McGuiness, P.J., and Corrigan, J. Cause called and argued by Eric Woosley, counsel for appellant, and Timothy Gonzalez, counsel for respondent. Cause ordered submitted.
- A095375      Gene Hazzard,  
                  v.  
                  Jerry Brown, as Mayor, et al.  
Panel for this case is comprised of Parrilli, J., McGuiness, P.J. and Pollak, J. Cause called and argued appellant Gene Hazzard and Vicki Laden,

counsel for respondent. Cause ordered submitted. McGuiness, P.J. left the bench after this case.

A094306

The People,

v.

Issaiah W.

Panel for this case is comprised of Corrigan, J., Parrilli, J., and Pollak, J. Cause called and argued by Alan Dell'Ario, counsel for appellant, and Margo Yu, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Thursday, May 2, 2002

Division One

**A096487 -- In re Karla B., a Person Coming Under the Juvenile Court Law. Del Norte County Department of Health and Human Services v. Michelle B.**

Let a peremptory writ of mandate issue, commanding respondent County of Del Norte Superior Court in *In re Karla B.* (No. 99-089-J) to set aside its judgment terminating Michelle B.'s parental rights and setting a permanent plan of adoption, and to instead forthwith appoint conflict-free counsel for her, set a new Welfare and Institutions Code section 366.26 hearing and give all parties proper notice thereof. All other orders of the juvenile court remain in effect. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A095835 -- The People v. Daniel Gene Kee.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A096715 -- The People of the State of California v. The Superior Court of Napa County; Robert Otto Henkel, R.P.I.**

Let a peremptory writ of mandate issue directing the superior court to vacate its order granting probation and to enter a new order that complies with section 1210.1, subdivision (b)(1). Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Publication.)

**A093852 -- Northern California District Council of Laborers et al. v. S.G. Barber Construction, Inc.**

The judgment is reversed. Costs to the Union. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Thursday, May 2, 2002 (continued)

**A098567 -- Arlene Robertson v. The Superior Court of Marin County;  
Peter S. Brooks et al., R.P.I.**

By the Court: In light of the minute order dated March 29, 2002, the petition for writ of mandate is denied without prejudice to the timely filing of a new petition which shows compliance with the time limits set forth in Code of Civil Procedure section 437c, subdivision (1) and with California Rules of Court, rule 56. (See *Sturm, Ruger & Co. v. Superior Court* (1985) 164 Cal.App.3d 579, 582; *Schmidt v. Superior Court* (1989) 207 Cal.App.3d 56, 60.) Kline, P.J.

Division Three

**A093850 -- Richard Castaneda v. Wayne Husted.**

The judgment on the complaint is affirmed. The trial court's order granting judgment on the pleadings on Husted's first cause of action in the cross-complaint is reversed and remanded for further proceedings thereon. The judgment on the remaining causes of action in the cross-complaint is remanded so that the trial court may amend either the judgment or the statement of decision. Husted shall recover his costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Thursday, May 2, 2002 (continued)

Division Five

**A095521 -- Alex R. Thomas & Company v. Mutual Service Casualty Insurance Company.**

Order Certifying Opinion for Partial Publication. By the Court:

1. The opinion in the above-entitled matter filed on April 2, 2002, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be partially published in the Official Reports, and it is so ordered.

2. Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts II.B through II.E. Jones, P.J. (Certified for Partial Publication.)

**MINUTES**

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, May 2, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Simons, J., Gemello, J., and Richard H. Sandvik, Deputy Clerk.

A094670 Argument Waived

A096012 In re the Marriage of Susan and Gary Lamusga  
Susan Poston Lamusga

v.

Gary Lamusga

Cause called and argued by Eric Zagrans, counsel for appellant and by Garrett C. Dailey, counsel for respondent. Cause ordered submitted.

A096733 Alfred Fernandez et al.

v.

Concrete Shell Structures

Cause called and argued by Diane K. Godfrey, counsel for appellant, arguing via teleconference, and by Judith A. Pemberton, counsel for respondent. Cause ordered submitted.

At this point in the proceedings Justice Jones left the bench and Justice Stevens took her place for the remainder of the calendar.

A093696 L.L.L. Company

v.

George Wynns, et al.

Cause called and argued by George Wynns, in pro per and by Terry Michael Ewing, counsel for respondent. Cause ordered submitted.

Court adjourned at 10:10 a.m.



Friday, May 3, 2002

Division One

**A095350 -- The People v. William Thomas Page.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A094877 -- In re the Marriage of Sally F. and Samuel Kornhauser.  
Sally F. Kornhauser v. Samuel Kornhauser.**

The written order of March 7, 2001, is affirmed; the purported appeals from the oral rulings of January 25 and March 1, 2001, are dismissed. Costs to respondent. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A098576 -- In re Raul J. Nieves, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A093897 -- In re Ramon W., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Jose G.**

We affirm the findings and orders of the juvenile court. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Five

**A095668 -- In re Joseph H., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services v. Rory H.**

The order declaring the child a dependent of the court and removing him from parental custody is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Monday, May 6, 2002

Division Two

**A095784 & A095981 -- In re Amy L. et al., Persons Coming Under the Juvenile Court Law. San Francisco Department of Human Services v. Olivia L.**

Both of these appeals are dismissed as moot. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A098392 -- Mastercard International Inc. et al. v. The Superior Court of Alameda County; Adam A. Schwartz, R.P.I.**

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Division Three

**A094647 -- The People v. Jerry Lee Norris.**

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

**A095187 -- Yohanan Family Limited Partnership v. County of Contra Costa, Contra Costa Community Development Department; Sun Valley Village Homeowners Association, R.P.I.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

**A094513 -- The People v. Marvin Wayne Young, Sr.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Monday, May 6, 2002 (continued)

Division Four

**A094169 -- In re William F., a Person Coming Under the Juvenile Court Law. The People v. William F.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

**A093188 -- The People v. David Busio Lopez.**

The matter is remanded to the trial court with instructions to recalculate the custody credits that Lopez is entitled to receive and to issue a corrected abstract of judgment reflecting the correct calculation of credits. In all other respects, the sentence imposed in 2000 is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A095615 -- Andrew Pillet v. Stephen H. Kendrick et al.**

The judgments entered in favor of defendants Kendrick and Lewis are affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A093601 -- San Mateo County Transit District. v. Flat Rate Rent-A-Car.**

The summary judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

**A096064 and A096943 -- Rory McHale v. C & R Heating.**

By the Court: The petition for rehearing is denied. Jones, P.J.

**A094225 -- Purcell-Murray Company, Inc. v. Wolf Range Company, LLC, et al.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, May 6, 2002 (continued)

**A093280, A094053 -- Marilee Sumpter v. Brian Clark.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.  
(Not for Publication.)

Tuesday, May 7, 2002

Division Two

**A097966 -- In re Grady B., a Person Coming Under the Juvenile Court Law. Sonja B. v. Superior Court of Solano County; Solano County Department of Health and Social Services, R.P.I.**

The petition for extraordinary writ is denied on the merits. Since the permanency planning hearing is presently set for June 5, 2002, our decision on the writ petition is final as to this court immediately. (Rule 24(d).) Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A098641 -- Frederick Lynn Franklin v. The Superior Court of San Mateo County; People of the State of California, R.P.I.**

By the Court: The petition for writ of mandate is denied. Kline, P.J.

Division Three

**A095375 -- Gene Hazzard v. Jerry Brown, as Mayor of the City of Oakland, et al.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Five

**A087483 -- The People v. Bruce Edward Cooper.**

By the Court:\* The judgment is affirmed. (Not for Publication.)

\*Before Jones, P.J., Stevens, J., and Rivera, J., Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.

**A095166 -- Dah Wa Enterprises, Inc. v. Steven Tipping & Associates.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

Tuesday, May 7, 2002 (continued)

**A096099 -- In re Kaitlynn M., a Person Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services. v. Melissa B.**

The orders appealed from are affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Wednesday, May 8, 2002

Division One

**A090334, A092497 -- Alan D. Liker v. Angel View Crippled Children's Foundation et al.**

In A090334, the order denying Liker's renewed petition for distribution is affirmed. In A092497, the judgment is affirmed. Swager, J. I Concur: Jones, J.\* (See dissenting opinion by Stein, Acting P.J.) (Not for Publication.)

\*Presiding Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091319 -- Loong Fah Lu et al. v. Theodore W. Dang.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on April 16, 2002, be modified in the following particulars: (See order.) There is no change in the judgment. The petition for rehearing is denied. Marchiano, P.J. (Not for Publication.)

**A093757 -- Jack Zakarian et al. v. George Bekov et al.**

The superior court's order of November 22, 2000 regarding the denial of the motion to compel arbitration of the arbitrable claims as to Bekov is reversed with directions that the court enter a new order referring the issue of Bekov's joinder or intervention in the arbitration to the arbitrator. The order is also reversed as to the denial of consolidation of cases 313149 and 301827 in the superior court. In all other respects, the order is affirmed. Appellants are entitled to costs on appeal. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Certified for Publication.)

Division Two

**A098294 -- Robert Burch v. The Superior Court of Sonoma County; Jeremy Donahoo et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

Wednesday, May 8, 2002 (continued)

**A095702 -- Montie S. Day v. Alta Bates Medical Center.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J.  
(Certified for Publication.)

**A093636 -- The People v. Frank James Howard.**

Appellant's conviction for violating section 422 is reversed. The judgment is otherwise affirmed. Kline, P.J. I concur: Ruvolo, J. (See dissenting opinion by Haerle, J.) (Not for Publication.)

Division Three

**A095346 -- The People v. Larry Ashley.**

In sum, we find no arguable errors for review pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436. The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A092894 -- Alan Griffin v. State of California.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Four

**A096192 -- Tim Peterson v. Harrison Brownell et al.**

The appeal is dismissed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J.  
(Not for Publication.)



Wednesday, May 8, 2002 (continued)

Division Five

**A096095 -- In re Alejandro B., a Person Coming Under the Juvenile Court Law. The People v. Alejandro B.**

The orders are affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication.)

**A095301 -- Shelly Dressel v. Armando C. Borjal et al.**

The order denying the motion to strike the cause of action for retaliation (third) is reversed and the trial court is directed to enter a new and different order granting the motion with prejudice as to that cause of action, in addition to the causes of action for defamation (fourth) and malicious prosecution (sixth) already struck. The trial court's order denying the motion to strike the causes of action for sexual harassment (first), sexual battery (second), and wrongful termination (fifth) is affirmed. Defendants, upon proper application, shall recover attorney fees and costs in connection with their anti-SLAPP motion and on appeal, under section 425.16, subdivision (c), in an amount to be determined by the trial court. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A094128 -- The People v. Timothy Robinson.**

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment showing that the trial court sentenced appellant to the middle term of three years, and then doubled that term to six years pursuant to the strike finding. In all other respects, the judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Thursday, May 9, 2002

Division One

**A096743 -- The People v. Deidre Ingram.**

The judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A094885 -- Josphe Thomas, et al. v. The California Department of Health Services.**

By the Court: The petition for rehearing is denied. Swager, J.

Division Two

**A095220 -- Crystal Holidays, Inc. v. Michael S. Bernick, as Director, etc., Unemployment Insurance Appeals Board et al.; Dana Miller, R.P.I.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

**A093650 -- Jo Kinsman v. Fluor Corporation.**

The judgment is reversed. On remand the trial court shall vacate its order granting Fluor's motion for summary judgment and enter a new order under subdivision (h) of the section 437c of the Code of Civil Procedure. Plaintiff Jo Kinsman is awarded costs on this appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A098375 -- Legacy Partners 2323 L.P. et al. v. The Superior Court of San Mateo County, Jim L. Woodson, Individually and as Trustee, etc., R.P.I.**

By the Court: The petition for a writ of mandate and the related request for a stay are denied. (Corrigan, Acting P.J., Parrilli, J. & Pollak, J. participating.)

Thursday, May 9, 2002 (continued)

**A094306 -- In re Issaiah W., a Person Coming Under the Juvenile Court Law. The People v. Issaiah W.**

The January 23, 2001 order is affirmed. The appeal from an order denying Issaiah's petition for rehearing is dismissed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Division Four

**A094458 -- Kevin Hogan v. Edward Albert Ripple et al.**

The order granting plaintiff's motion for attorney fees under section 2033, subdivision (o) is reversed. The case is remanded to the trial court with instructions to enter an order consistent with this opinion. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A095196 -- Jonathan Cobb v. City and County of San Francisco Residential Rent Stabilization and Arbitration Board; Richard Passalacqua,**

Order Modifying Opinion and Certification of Opinion For Publication. By the Court: It is ordered that the opinion filed herein on April 10, 2002, be modified as follows: (See order.) The modification does not effect a change in the **R.P.I.** judgment. As modified, the opinion, pursuant to California Rules of Court, rules 976(b) and 976.1, is certified for publication with the exception of parts II, IV, V, and VI of the Discussion. Jones, P.J.

**A096481 -- In re Shelsey P., a Person Coming Under the Juvenile Court Law. The People v. Shelsey P.**

The orders of the juvenile court are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, May 10, 2002

Division One

**A096916 -- Freshwater Creek Neighborhood Association et al. v. Pacific Lumber Company et al.**

The judgment on the pleadings is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

**A095357 -- The People v. Daniel S. Voss.**

The order setting aside the information is reversed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A094346 & A095326 -- Nikko Blunt v. Rehabicare, Inc.**

The judgment is reversed. Rehabicare is awarded costs. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A094822 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Company, Max Astan.**

We affirm the judgment denying the applications for an OSC. Respondent is awarded its costs on appeal. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A094790 -- Susan Willey et al. v. William Oswald et al.**

The appeals of Laura Corning, Douglas Corning, and Dennis Mackler are dismissed. The judgment dismissing appellants' second amended complaint is reversed. The case is remanded for further proceedings consistent with this opinion. Costs on appeal to appellants. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Friday, May 10, 2002 (continued)

Division Three

**A093427 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Company, Aero-Crete, Inc.**

The order is reversed. The parties shall bear their own costs on appeal.  
Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Five

**A096012 -- In re the Marriage of Susan and Gary Lamusga.**

We reverse the order to the extent it grants primary physical custody of the children to Father if Mother moves away. We remand with directions to determine whether, in light of Mother's presumptive right to move with the children, a change of custody is essential for the children's welfare. (§ 7501; *Burgess, supra*, 13 Cal.4th at p. 32.) In so doing the trial court may consider additional circumstances bearing on the children's best interest that may have developed since the date of the order appealed from. (*In re Marriage of Biallas* (1998) 65 Cal.App.4th 755, 764.) Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Monday, May 13, 2002

Division One

**A095367 -- Rodney Richard Jones v. Department of Motor Vehicles, et al.**

By the Court: The petition for rehearing is denied. Since this court's April 11, 2002 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the requests for publication are denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Marchiano, P.J.

Division Three

**A098477 -- William Robert Hayes v. The Superior Court of Solano County; Board of Prison Terms and Attorney General of the State of California, R.P.I.**

Let a peremptory writ of mandate issue directing the Solano County Superior Court to vacate its order of April 10, 2002, denying Mr. Hayes' petition, to allow Mr. Hayes 30 days to file his denial or traverse, and to reexamine the matter in light of Mr. Hayes' denial or traverse, if one is filed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A093546 -- Harry W. Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; Barry Erlich et al., Claimants and Appellants.**

The judgment is affirmed. Respondent shall recover its costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A096571 -- The People v. Darryl Keith Phillips.**

Pursuant to section 4852.01, subdivision (d), appellant is statutorily ineligible for a certificate of rehabilitation. (See *People v. Ansell* (2001) 25 Cal.4th 868.) Accordingly, the court's order denying appellant's petition is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Tuesday, May 14, 2002

Division One

**A094258 -- Estate of John H. East, Deceased.**

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

**A096061 -- The People v. Richard Daniel Perez.**

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A093562 -- The People v. Jaime Rodriguez**

The trial court did not abuse its discretion in sentencing appellant to the upper term. (*Lamb, supra*, 206 Cal.App.3d at p. 401.) The judgment is affirmed. McGuinness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, May 14, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J.; Reardon, J.; and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

- A092481     In re the Marriage of Chopra  
              Reena Chopra  
              v.  
              Deepak Chopra  
Cause called. In pro per appellant Reena Chopra argued. Lawrence H. Stotter argued for respondent. Cause submitted.
- A087190     Donald R. Tope  
              v.  
              Greg McCord et al.  
Cause called. Robert Rusky argued for appellant Tope. Patrick Macias argued for respondents. Cause submitted.
- At this point, the court reconstituted itself from Kay, P.J., Reardon, J., and **Sepulveda, J.** to Kay, P.J., Reardon, J. and **Rivera, J.**
- A095457     Gordon Gee et al.  
              v.  
              American Realty & Construction, Inc. et al.  
Cause called. Mattaniah Eytan argued for appellants American et al. Bradley Kass teleargued for respondent Gee et al.. Cause submitted.



At this point, the court reconstituted itself from Kay, P.J., **Reardon, J.** and Rivera, J. include Kay, P.J., **Sepulveda, J.** and Rivera, J.

A096528 Steven Seidman

v.

Kuniko Jorgensen

Cause called. Carolyn Gold argued for appellant Seidman. David Wasserman argued for respondent. Cause submitted.

The Court recessed at 10:44 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, May 14, 2002

The Court reconvened at 1:40 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kay, P.J.; Reardon, J.; and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Jason Keirse, Bailiff.

A092278      Golden Gateway Center

v.

Jennifer Herman

Cause called. Cause continued to the May 31, 2002 oral argument calendar.

At this point, the court reconstituted itself from Kay, P.J., Reardon, J. and **Sepulveda, J.** to Kay, P.J., Reardon, J., and **Rivera, J.**

A091883      Terence Crosby et al.

A093200      v.

Rene De La Rosa

Causes called. James Martin argued for De La Rosa. Richard Leland argued for Crosby et al. Causes submitted.

The Court adjourned at 2:15 p.m.

Tuesday, May 14, 2002 (continued)

Division Five

**A094230 -- The People v. Anthony James Gammello.**

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

**A094039 -- The People v. Spencer Troy Lucas.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Wednesday, May 15, 2002

Division One

**A095424 -- The People v. Edwin Lashon Bradford.**

By the Court: Respondent's motion to dismiss the appeal is granted and the appeal is dismissed. Stein, Acting P.J.

**A093823 -- The People v. Alvictor Bradford.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A093579 -- The People v. Brandon Chism.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, May 15, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

- A094857     The People  
              v.  
              Freddy Lamar Haas  
Cause called and argued by Roberta Simon, counsel for appellant and Ryan McCarroll, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A096222     Elizabeth Swanson  
              v.  
              Liquid Sugars, Inc.  
Cause called and argued by Sarah Mott, counsel for appellant and George Emblidge, counsel for respondent. Cause ordered submitted.
- A094518     Regina Rosenthal, et al.  
              v.  
              Inter-State Assurance Co., et al.  
Cause called and argued by Marie Weiner, counsel for appellants and Robert Fischer and James Fleming, counsel for respondents. Counsel for respondent granted 5 days in which to file a letter brief, whereupon the cause shall be deemed submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Haerle, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A094394 Francis Thomas Fahy

v.

Steven Pisano

Cause called and argued by Francis Thomas Fahy, appellant in propria persona and James Moneer, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, May 16, 2002 at 9:30 a.m.

Wednesday, May 15, 2002 (continued)

Division Three

**A094597 -- The People v. Timothy Roller.**

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

**A096168 -- In re Zina M., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children & Family Services v. Truman M.**

The order is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Thursday, May 16, 2002

Division One

**A095357 -- The People v. Daniel S. Voss.**

By the Court: On the Court's own motion, rehearing in the above-referenced matter is granted. Stein, Acting P.J.

Division Two

**A098026 -- Eric B. Fakhimi v. The Superior Court of Contra Costa County; Patricia J. Shaver, R.P.I.**

By the Court:\* We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance and receiving opposition from Mother. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) The entitlement to relief is obvious and no purpose would be served by plenary consideration of the issue. (See *Alexander v. Superior Court* (1993) 5 Cal.4th 1218; *Ng v. Superior Court* (1992) 4 Cal.4th 29.) Accordingly, let a peremptory writ of mandate issue commanding respondent superior court to vacate its order compelling Father to submit to a hair drug analysis. Father is entitled to costs. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) (Not for Publication.)

\*Before Kline, P.J., Lambden, J., and Ruvolo, J.

**A088793 -- Arnold Michaels, et al. v. Marilyn Barletta.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A097063 -- The People v. Sean Tracy Raab.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A097357 -- The People v. Timothy Allen Taber.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)



## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Thursday, May 16, 2002

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Kline, P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

A096401      Conservatorship of Edward Williams, Jr.  
Edward Williams, Jr.,  
v.  
Gail Lamkins.  
Cause called and argued by Morton P. Cohen, counsel for appellant, and Geoffrey Allen, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Lambden leaves the bench and Justice Haerle joins the bench for the remainder of the cases.

A094979      Kimber Ruffu,  
v.  
California Physicians' Service.  
Cause called and argued by Douglas deVries, counsel for appellant, and Gregory Pimstone, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Kline leaves the bench and Justice Lambden joins the bench for the remainder of the cases.

A095991      Ross Dodson et al.,  
v.  
City Center Realty et al.  
Cause called and argued by Edward Fishman, counsel for appellants, and Michael Lunas and Rebekka Martorano, counsels for respondents. Cause ordered submitted.

A095230      Jeffrey Huff et al.,  
v.  
American Protective Services et al.

Cause called and argued by Jan Lofthouse, counsel for appellant, and Casey Clow, counsel for respondent. Cause ordered submitted.

**COURT ADJOURNED.**

Thursday, May 16, 2002 (continued)

Division Three

**A095277 -- The People v. James Winston Hockenberry.**

The order returning Hockenberry to outpatient treatment is affirmed.  
Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A092788 -- The People v. Kirth Bhagwan.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A096286 -- The People v. Jessica Nukamma Ramos.**

The judgment is affirmed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A087190 -- Donald R. Tope v. Greg McCord et al.**

The judgment is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A098213 -- Leon W. v. The Superior Court of Sonoma County; Sonoma County Department of Human Services, R.P.I.**

The writ is denied on the merits. The stay heretofore imposed is lifted. This decision is final as to this court immediately. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Friday, May 17, 2002

Division One

**A09606 - The People v. Teodoro Marcelino Cifuentes.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A098408 -- Carolyn H. v. The Superior Court of Contra Costa County; Contra Costa County Department of Children and Family Services, et al., R.P.I.**

The petition for extraordinary writ is denied on the merits. The section 366.26 hearing is set for June 5, 2002. Therefore, this opinion is final as to this court immediately. (Cal. Rules of Court, rule 24(d).) Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Three

**A094984 -- The People v. Wayne Smith.**

Defendant's conviction for assault with a deadly weapon (§ 245, subd. (a)(1)) is reversed and the sentence enhancement based on the use of a deadly weapon (§ 12022, subd. (b)) is imposed under count 1 and stayed. The judgment is affirmed in all other respects. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A095086 -- The People v. Roberto Manuel Hurtado.**

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Friday, May 17, 2002 (continued)

**A098129 -- Julie V. v. The Superior Court of Alameda County;  
Alameda County Social Services Agency, R.P.I.**

The petition is denied on its merits. (Welf. & Inst. Code, § 366.26, subd. (1)(1); Cal. Rules of Court, rule 39.1B(d)(2).) This opinion is final forthwith. (Cal. Rules of Court, rule 24(a).) Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A095806 -- Alan Swain et al. v. California Casualty Insurance Co.**

The judgment is modified, nunc pro tunc to the date of the trial court's order granting summary judgment, to provide that plaintiffs take nothing, that the main action be dismissed, and that cross-complainant CCIC have and take judgment on its cross-complaint by way of a declaration that it is not obligated by its policy to defend or indemnify plaintiffs in connection with the claims at issue in this matter. As so modified, the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Monday, May 20, 2002

Division One

**A096390 -- In re Gary B., a Person Coming Under the Juvenile Court Law. The People v. Gary B.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A095357 -- The People v. Daniel S. Voss.**

By the Court: Since this court's 5-10-02 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Swager, Acting P.J.

Tuesday, May 21, 2002

Division One

**A095564 -- In re Tony Y. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Liant T.**

The order is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

**A098776 -- In re David Jesus Faris, Jr., on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A094564 -- In re the Marriage of Howard E. Hinman and Aisha Othman.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

**A095703 -- Mary C. Keitel v. George W. Heubel, et al.**

The July 3, 2001, order is affirmed. In addition, the following monetary sanctions are imposed for abuse of the appellate process and unreasonable failure to comply with the rules of court: The Heubels shall pay \$3,700 to Keitel and \$6,000 to the clerk of this court. Attorney Daniel Bacon shall pay \$3,7000 to Keitel. The clerk of this court is directed to deposit the sum paid by the Heubels into the general fund. All sanctions shall be paid no later than 15 days after the date the remittitur is filed. Keitel is awarded costs on appeal. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Certified for Publication.)

**A095480 -- Jeffrey R. Krinsk v. Chiron Corporation.**

We hereby dismissal the appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Tuesday, May 21, 2002 (continued)

**A084117 -- The People v. Tony Domingo Lee.**

**A097097 -- In re Tony Domingo Lee, on Habeas Corpus.**

The judgment is affirmed, and the petition writ of habeas corpus is denied.  
Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A095592 -- In re Joel G., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Department v. Monica D.**

The June 19, 2001 juvenile court order is reversed, subject to reinstatement upon compliance with the ICWA notice requirements and consideration of the requirements of section 361.3. Pollak, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A095500 -- In re Anthony K., a Person Coming Under the Juvenile Court Law. The People v. Anthony K.**

The judgment is affirmed. The juvenile court is directed to modify its placement order to include the findings made in its order of June 19, 2001.  
Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098801 -- PNS Stores, Inc. v. Alcoholic Beverage Control Appeals Board; Manuel Espinoza, as Interim Director, etc., R.P.I.**

By the Court: The petition for a writ of mandate and the related request for a stay are denied. (McGuinness, P.J., Corrigan, J. & Pollak, J., participating.)  
McGuinness, P.J.

Division Four

**A095457 -- Gordon Gee et al. v. American Realty & Construction, Inc., et al.**

The order is affirmed. Costs to respondents. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)



Wednesday, May 22, 2002

Division One

**A098349 -- Angela B. v. The Superior Court of Del Norte County; Del Norte County Department of Health and Social Services, R.P.I.**

We hold that the trial court's findings were supported by the evidence, and that its orders were well within its discretion. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for May 29, 2002. Therefore, our decision is final in this court immediately. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A096565 -- The People v. John Allen Ledbetter.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A097502 -- In re Austin R., a Person Coming Under the Juvenile Court Law. Mendocino County Social Services Dept. v. Brandi U.**

By the Court: The appeal is dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Marchiano, P.J.

**A095725 -- Warren Robinson et al. v. Chin & Hensolt et al.**

The summary judgments in respondents' favor are affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication.)

Division Two

**A094028 -- William V. Denardo et al. v. Headlands Mortgage Company.**

The judgment is affirmed. HMC is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Wednesday, May 22, 2002 (continued)

**A096834 -- Pacific Gas & Electric Company. v. Public Utilities Commission.**

The Court: The petition for writ of review is denied. Kline, P.J.

**A098807 -- United Rentals Northwest, Inc. et al. v. The Superior Court of San Francisco County; Alvin Richter et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition/stay is denied without prejudice to the filing of a petition in compliance with *Sherwood v. Superior Court* (1979) 24 Cal.3d 183 and California Rules of Court, rule 56, subdivision (c.) Kline, P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE  
MINUTES

Wednesday, May 22, 2002

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuiness, P.J., Corrigan J., Parrilli, J., and I. Calanoc, Deputy Clerk.

- A089224      Patrick S. Hallinan,  
                         v.  
                         Ciro Mancuso.  
Cause called and argued by Paul Halvonik, counsel for appellant, and Robert Moore, counsel for respondent. Cause ordered submitted.
- A093352      Ali Himed et al.,  
                         v.  
                         Shivander Kaur, et al.  
Cause called and argued by Elizabeth Clark, counsel for appellants, and Nancy Koffman, counsel for respondents. Cause ordered submitted.
- A091124      James and Patricia Quinn,  
                         v.  
                         Thomas McCoy; The Pacific Bank.  
Cause called and argued by Herbert Yanowitz, counsel for appellants; David Rapson and George Wolff, counsel for respondents. Cause ordered submitted.
- A090998      The People,  
                         v.  
                         Gary James Palmer.  
The panel for this case is comprised of McGuiness, P.J., Parrilli, J. and Pollak, J. Cause called and argued by Jean Matulis, counsel for appellant, and Tom Brady, counsel for respondent. Cause ordered submitted.  
McGuiness, P.J. left the bench after this case.

The panel for the following cases is now comprised of: Corrigan, J., Parrilli, J. and Pollak, J.

- A090211 Marilyn Valencia,  
v.  
Oakland Unified School District.  
Cause called and argued by Jason Jungreis, counsel for appellant, and Thomas Fellows, counsel for respondent. Cause ordered submitted.
- A098080 Johnny B.,  
v.  
Social Services Agency, et al.  
Cause called and argued by Victor Matl, counsel for petitioner; and via teleconference, JoAnn Parker and Brenda Russo-Woolsy for real parties in interest. Cause ordered submitted.
- A093853 Mary Jo Zalac,  
v.  
Governing Board of the Ferndale  
Unified School District.  
Cause called and argued by Andrew Stunich, counsel for appellant, and William Mitchell, counsel for respondent. Cause ordered submitted.
- A091833 The People,  
v.  
Shepard Scott Sanders.  
Cause called and argued by Janice Brickley, counsel for appellant, and Violet Lee, counsel for respondent. Cause ordered submitted.

COURT RECESSED

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE  
MINUTES

Wednesday, May 22, 2002

Court reconvened at 1:30 p.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness, P.J., Parrilli, J., Pollak, J and I. Calanoc, Deputy Clerk.

- A095466      Loida Snyder et al.,  
                  v.  
                  Ortho-McNeil Pharmaceuticals, et al.  
Cause called and argued by Kenneth Tishgart, counsel for appellants; Alan Lazarus and Gregory Rockwell, counsel for respondents. Cause ordered submitted.
- A094617      Sun Sun Chen et al.,  
                  v.  
                  Hensel Phelps Construction Company.  
Cause called and argued by Thomas Fraysse, counsel for appellants, and Jeffrey Vucinich, counsel for respondent. Cause ordered submitted.
- A89786      William Sexton et al.,  
A091655      v.  
A093956      Hasan Mansouri.  
Cause called and argued by Bryce Anderson, counsel for appellant Mansouri, and Gary Garfinkle, counsel for respondents Sexton, et al. Cause ordered submitted.
- A094323      The People,  
                  v.  
                  Aaron Thomas Bjorkstrand.  
Cause called and argued by Timothy Gray, counsel for appellant, and Thomas Brady, counsel for respondent. Cause ordered submitted.
- A092376      The People,

v.

Marcus Eric Dukes.

Cause called and argued by Candace Hale, counsel for appellant, and Stan Helfman, counsel for respondent. Cause ordered submitted.

A093026

The People,

v.

Kelly Eugene Nebel.

The panel for this case is comprised of McGuiness, P.J., Corrigan, J., and Pollak, J. Cause called and argued by Edward Garcia, counsel for appellant, and Gerald Engler, counsel for respondent. Cause ordered submitted.

A092775

Golden Bay Fence Plus Iron Works, Inc.

v.

Ray Wilson Co. et al.

The panel for this case is comprised of McGuiness, P.J., Corrigan, J. and Pollak, J. Cause called and argued by Alan Martini, counsel for appellant; Gregory Dukellis and John Warnlof, counsel for respondents. Cause ordered submitted. Justice McGuiness left the bench after this case.

A093453

Terry McCarthy,

v.

Siemens Information and  
Communications Networks, Inc.

The panel for this case is comprised of Corrigan, J., Parrilli, J. and Pollak, J. Cause called and argued by Mark Thierman, counsel for appellant, and Eric Meckley, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Wednesday, May 22, 2002 (continued)

Division Four

**A087501 -- The People v. Richard Allen Frustere.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J.  
(Not for Publication.)

**A094534 -- The People ex rel. City of Willits v. Certain Underwriters at Lloyd's of London et al.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on April 23, 2002, be modified as follows: (See order.) This modification does not change the judgment. The petitions for rehearing are denied. Reardon, Acting P.J. (Not for Publication.)

Division Five

**A094407 -- The People v. David Lawrence Faulkenberry.**

The judgment of conviction is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A094548 -- The People v. Darnell Kent.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

**A093696 -- L.L.L. Company, A Washington Corporation v. George S. Wynns and Jill Wynns.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Thursday, May 23, 2002

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Swager, J.; N. Millner, Deputy Clerk, and CHP Officer A.H. Ching, Bailiff.

- A092790      The People,  
                  v.  
                  Abraham T. Zemarian.  
Cause called and argued by Diana M. Teran, counsel for appellant, and Gerald Engler, counsel for respondent. Cause ordered submitted.
- A095778      Premier Valley Foods, Inc.,  
                  v.  
                  Del Monte Corporation, et al.  
Cause called and argued by J. Gregory Taylor, counsel for appellant, and Martin C. Washton, counsel for respondents. Cause ordered submitted.
- A094843      Charles Chan,  
                  v.  
                  Kammy W. Au.  
Cause called and argued by Glen Lee Moss, counsel for appellant, and Brent Seymour, counsel for respondent. Cause ordered submitted.
- A093556/  
A093914      George v. Simon,  
                  v.  
                  John Muir/Mt. Diablo Health System, et al.  
Cause called and argued John Randall Andrada, counsel for appellants, and Andrew J. Weill, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Stein left the bench and Justice Margulies joined the bench.



A095858      San Francisco Taxi Permitholders, et al.,  
v.  
City and County of San Francisco, et al.  
Cause called and argued by Richard A. Judd, counsel for appellants, and  
Wayne K. Snodgrass, counsel for respondent. Cause ordered submitted.

A095009      Anderson Valley Environmental Protection Group,  
v.  
County of Mendocino;  
Gary Kaliher, et al.  
Cause called and argued by Rose M. Zoia, counsel for appellant, and James  
F. King, counsel for respondent, and Frank E. Zotter, counsel for  
defendant. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Thursday, May 23, 2002

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Margulies, J.; B. Robbins, Deputy Clerk; and CHP Officer A.H. Ching, Bailiff.

- A092891 Irene M. Rivera,  
v.  
Laguna Honda, et al.  
Cause called and argued by Jerry H. Langer, counsel for appellant, and Michael J. Leon Guerrero, counsel for respondents. Cause ordered submitted.
- A094461 Chrystal Phillips,  
v.  
Daniel Anthony Lambert, et al.  
Cause called. Counsel for appellant, Nicholas Hornberger, was not present. The Court was informed that counsel for appellant was contacted and he advised he had sent a letter stating he would not be appearing for oral argument and would submit on the briefs. The Court briefly heard argument from Jules S. Zeman, counsel for respondent, who was present in the courtroom. Cause ordered submitted.
- A095699 Elizabeth Oakley,  
v.  
Russian River Realty.  
Cause called. Counsel for respondent, Judith Pemberton, was not present. The Court was advised that counsel for respondent was contacted and she advised that she never received the Court's calendar notice. Counsel for appellant, James W. Moore and Thomas F. Maxwell, who were present, were advised the matter would be continued. Cause ordered continued.

A092213/ Mark Lewis, et al.,  
A093411 v.

John Crane, Inc.

Cause called and argued by Phillip S. Ward, counsel for appellant John Crane, and Harry Wartnick, counsel for appellants Mark Lewis, et al.  
Cause ordered submitted.

Court recessed until Friday, May 24, 2002 at 9:00 a.m.

Thursday, May 23, 2002

Division Two

**A098829 -- In re Michael Davis, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner should seek relief, if any, in the Third District Court of Appeal. Kline, P.J.

**A094976 -- Stephen Gatto v. County of Sonoma et al.**

For the foregoing reasons, the portion of the judgment finding that appellants denied Gatto free and equal access to the Fair in violation of the Unruh Act is reversed. In all other respects the judgment is affirmed, as is the award of attorney fees, the amount of which is unchallenged. Respondent shall receive his costs on appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Certified for Publication.)

**A091478 -- The People v. Kenneth Phelon.**

The abstract of judgment shall be corrected as indicated above and as so corrected is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A093772 -- The People v. Anthony Shumake.**

**A096091 -- In re Anthony Shumake, on Habeas Corpus.**

We affirm the judgment and deny the petition. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A094583 -- The People v. Tommy Clayton.**

The judgment is reversed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Thursday, May 23, 2002 (continued)

Division Four

**A093993 -- The People v. Robert Fred Craig.**

The judgment of conviction is reversed and the cause is remanded for the sole purpose of resentencing in conformity with this opinion. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

**A094451 -- The People v. Brian Joseph Paling.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A095216 -- Kathryn Pena v. The Rolladium.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

**A093145 -- Marjory Siegel v. California Pacific Medical Center.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, May 24, 2002

Division One

**A095669 -- In re Danielle B., a Person Coming Under the Juvenile Court Law. Department of Children and Family Services v. Robert B.**

The order is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

**A098841 -- In re Rodney Blach, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner's complaints center on conditions of confinement and prison regulations. Petitioner must first exhaust all available administrative remedies. (*In re Dexter* (1979) 25 Cal.3d 921, 925; *In re Muszalski* (1975) 52 Cal.App.3d 500.) Petitioner must then seek relief, if any, in the superior court. Kline, P.J.

**A098868 -- Danny Lamont Hamilton v. The Superior Court of Contra Costa County; People of the State of California, R.P.I.**

By the Court: The petition for writ of prohibition is denied. Kline, P.J.

**A095508 -- In re Anthony V., a Person Coming Under the Juvenile Court Law. The People v. Anthony V.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A093625 -- The People v. Kirk Anthony Williams.**

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Friday, May 24, 2002 (continued)

Division Three

**A095890 -- The People v. Eric Jonathan Bowers.**

By the Court: The petition for rehearing is denied. McGuinness, P.J.

**A091882 -- In re the Marriage of Christian and Vaughn De Guigne.  
Christian De Guigne v. Vaughn De Guigne.**

By the Court: the petition for rehearing is denied. McGuinness, P.J.

Division Five

**A091726 -- The People v. Ronnie Winn.**

The judgment of conviction is affirmed, but one of the two sentence enhancements imposed under section 667.5 must be vacated, because appellant served the two sentences in question concurrently, not separately. This ruling requires reduction of the total sentence by one year, to a total of 26 years to life. We therefore order that the sentence is so modified. We remand the matter to the trial court, with instructions that the clerk of the court should prepare and submit an amended abstract to the Department of Corrections. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

**A098095 -- In re Ronnie Winn, on Habeas Corpus .**

The petition for habeas corpus is denied, and the order to show cause is discharged. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Tuesday, May 28, 2002

Division One

**A097414 -- In re the Marriage of John and Hephzibah Guinn.  
Hephzibah Y. Guinn v. John Guinn.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a)(1) of the California Rules of Court, the appeal is dismissed. Marchiano, P.J.

Division Two

**A095050 -- In re Christopher K., a Person Coming Under the Juvenile Court Law. The People v. Christopher K.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A098267 -- Ali Mirzai and Hassan Afare v. The Superior Court of Alameda County; Joseph Matossian; R.P.I.**

By the Court:\* We have reached our decision after notice to all parties that we might act by issuing a peremptory writ in the first instance and receiving opposition from real party. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.) The entitlement to relief is obvious and no purpose would be served by plenary consideration of the issue. (*See Alexander v. Superior Court* (1993) 5 Cal.4th 1218; *Ng v. Superior Court* (1992) 4 Cal.4th 29.) Accordingly, let a peremptory writ of mandate issue commanding respondent superior court to vacate its order granting a new trial. Petitioners are entitled to costs. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d). (Not for Publication.)

\*Before Kline, P.J., Lambden, J. and Ruvolo, J.

**A095713 -- The People v. Marcella Jeanine Winston.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)



Tuesday, May 28, 2002 (continued)

Division Three

**A094323 -- The People v. Aaron Thomas Bjorkstrand.**

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098303 -- Tom Church v. City College, et al.**

By the Court: The letter received from appellant on May 11, 2002, is construed as a motion for reconsideration of this Court's order of May 3, 2002, dismissing the appeal. As such, the motion for reconsideration is denied with prejudice. McGuiness, P.J.

**A098867 -- In re Joseph Herron, on Habeas Corpus.**

By the Court: The petition for a writ of habeas corpus is denied. (McGuiness, P.J., & Corrigan, J. participating.) McGuiness, P.J.

**A093453 -- Terry McCarthy v. Siemens Information and Communications Networks, Inc.**

The judgment on the complaint is affirmed. Siemens is to recover its costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A093853 -- Mary Jo Zalac v. Governing Board of the Ferndale Unified School District.**

The judgment denying the petition for a writ of mandate is affirmed. Although we agree with the trial court's conclusion that the Class Size Reduction Program is a categorically funded program and it is not required by federal or state statute, Zalac was employed by the District beyond the expiration of the program in her school and thus was entitled to the protections against termination for economic reasons provided by sections 44949 and 44955. However, we conclude with the administrative law judge that Zalac was terminated in accordance with those protective provisions. This disposition renders it unnecessary to consider Zalac's further contention that she was entitled to an award of attorney fees. The Board shall recover its costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Certified for Publication.)

Tuesday, May 28, 2002 (continued)

Division Four

**A093851 -- Noreen Cardinale v. Robert Fitz-Stephens.**

The challenge to the sufficiency of the evidence is waived. The judgment is affirmed in its entirety. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A092481 -- In re The Marriage of Deepak and Reena Chopra.**

No error has been made to appear. The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A093574 -- The People v. Robert Bernard DeLouize.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Certified for Partial Publication.)

**A092818 -- Lawrence L. Maxwell v. CSE Safeguard Insurance Company et al.**

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

**A095775 -- K.F., a Minor, etc., et al. v. Julia Haynes-Gates et al.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A093362 -- The People v. James Frederick Ledesma.**

By the Court: It is ordered that opinion filed herein on April 30, 2002, be modified as follows: (See order.) The petition for rehearing is denied. This modification does not effect a change in the judgment. Stevens, Acting P.J.

Tuesday, May 29, 2002 (continued)

Division Two

**A095978 -- In re Claudio S., a Person Coming Under the Juvenile Court Law. The People v. Claudio S.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A098079 -- In re Tierra W., a Person Coming Under the Juvenile Court Law. Cheryl W. v. Alameda County Social Services Agency.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888; § 366.26, subd. (1) [precluding further challenge to these orders by petitioner in any subsequent appeal].) Since the permanency planning hearing is presently set for June 7, 2002, our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(d). Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Division Three

**A098080 -- Johnny B. v. The Superior Court of Solano County; Solano County Department of Health and Social Services et al., R.P.I.**

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14 *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Since the permanency planning hearing is set for June 26, 2002, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A093352 -- Ali Himed, et al. v. Jeffrey L. Black, M.D., et al.**

The order and judgment appealed are affirmed. Appellants shall pay respondents sanctions in the amount of \$600, plus costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

**A092563 -- The People v. Roger McIntosh.**

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Tuesday, May 29, 2002 (continued)

**A093026 -- The People v. Kelly Eugene Nebel.**

We affirm each of the challenged procedural rulings, as well as the court's renewal of Nebel's Murphy conservatorship. The evidence presented at trial established, beyond a reasonable doubt, that Nebel presents a substantial danger to others. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A094883 -- David McMahon v. Alan Riffer et al.**

The grant of summary judgment and order of dismissal are affirmed. Defendants shall recover their costs of appeal. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Four

**A091787, A092000, A092062, A092084, A092537, A092730  
Jackson Plaza Homeowners Association v. Alcal Roofing and  
Insulation.**

By the Court: The petitions for rehearing are denied. The Court grants rehearing on its own motion. The opinion as modified is attached hereto. Kay, P.J.

**A090599, A091895 -- Craig S. Kammerer et al. v. Millenium  
WDG/Retail Partners et al.**

**A091527, A092095 -- Craig S. Kammerer et al. v. Charles Collins et al.**

With respect to the Collinses, we reverse the judgment pertaining to the 15th and 33d causes of action; direct that judgment be entered in appellants' favor with respect to the 2d cause of action; and reverse the attorney fee award to the extent fees were allowed in connection with the 2d, 6th, 9th, 15th and 33d causes of action. With respect to Millennium, we reverse the judgment as to the 5th cause of action, and reverse the attorney fee award to that extent as well. The cause is remanded for further proceedings consistent with this opinion.

This disposition applies across the board to all of the consolidated appeals. Parties to bear their own costs on appeal. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Tuesday, May 29, 2002 (continued)

**A095447 -- Jane McGonnell, Individually and as Successor in Interest, etc., et al. v. Kaiser Gypsum Company, Inc., et al.**

The Court: The request of counsel for respondents Kaiser Gypsum Company, Inc. and Kaiser Cement Corporation for publication of this court's April 30, 2002, opinion is granted and it is hereby ordered that said opinion be published in the Official Reports. Kay, P.J. (Certified for Publication.)

**A093588 -- The People v. Lawrence Anthony Smith.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

**A093362 -- The People v. James Frederick Ledesma.**

By the Court: It is ordered that opinion filed herein on April 30, 2002, be modified as follows: (See order.) The petition for rehearing is denied. This modification does not effect a change in the judgment. Stevens, J.

**A092633, A094464 -- Dante Rabutaso et al. v. Manuel Canga et al.**

**A092642 -- Dante Rabutaso et al. v. Golden California Title Company.**

**A092943 -- Dante Rabutaso et al. v. Manuel Canga et al.**

The judgment is vacated and the matter is remanded to the trial court for entry of a new judgment consistent with this opinion. The Rabutasos shall recover from Canga their costs on appeal with respect to appeal Nos. A092943, A092633, and A094464. In all other respects, each party shall bear its own costs on appeal. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, May 30, 2002

Division One

**A096876 -- In re Krista M., a Person Coming Under the Juvenile Court Law. The People v. Krista M.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A094461 -- Crystal Phillips v. Daniel Anthony Lambert et al.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A096389 -- The People v. Rito Henry Ramirez.**

Appellant submits that “[n]one of the exceptions to section 1210.1 were applicable” to him, and therefore we “should direct the trial court” to grant probation. However, the record before us, and particularly the probation report, does not either conclusively establish or negate the statutory exceptions. Accordingly, the judgment is reversed and the case is remanded to the trial court for resentencing consistent with the provisions of section 1210.1. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

**A092891 -- Irene Rivera v. Laguna Honda Hospital et al.**

The judgment is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A098881 -- Marya L. Berrett v. The Superior Court of Contra Costa County; Joshua Woodruff, R.P.I.**

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

Thursday, May 30, 2002 (continued)

**A095517 -- The People v. Alan Fleming.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

**A098906 -- In re Benyam Kidane, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A095819 -- Peter Lewis v. Matthew Katz.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J.,  
Ruvolo, J. (Not for Publication.)

**A088752 -- In re the Marriage of Emma Misa and Ernesto Misa.**

The portion of the order requesting the County to correct its method of  
charging interest on the renewed judgment is vacated and remanded for further  
proceedings consistent with this opinion. Ruvolo, J. We Concur: Kline, P.J.,  
Lambden, J. (Not for Publication.)

**A098875 -- Anne M. Serifem Trust et al. v. The Superior Court of  
Sonoma County; Mark Howe, R.P.I.**

By the Court: The petition for writ of mandate/prohibition/stay is denied.  
Kline, P.J.

**A098927 -- United Rentals Northwest, Inc. et al. v. The Superior Court  
of San Francisco County; Alvin Richter et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition/stay is denied.  
Kline, P.J.

**A098885 -- In re Harry J. Williby, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Thursday, May 30, 2002 (continued)

Division Three

**A096477 -- In re Cheyenne B. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Joseph B.**

The September 5, 2001 orders are affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

**A094617 -- Sun Sun Cheng et al. v. Hensel Phelps Construction Company et al.**

On summary judgment, defendants successfully negated the duty element of plaintiffs' claims against them. The scope of defendants' duty to protect the public against unreasonable risks of harm did not extend to erecting barriers around the excavation pit that were so substantial that a moving automobile could not breach them. We affirm the trial court's entry of summary judgment for defendants, who shall recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A092775 -- Golden Bay Fence Plus Iron Works, Inc. v. Ray Wilson Co. et al.**

The judgment is affirmed. Respondents are to recover their costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A089224 -- Patrick S. Hallinan v. Ciro Mancuso.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A085274 -- Kenneth Katzoff v. Vicki Woodhead.**

The appeal is dismissed as moot. Each party shall bear its own costs on appeal. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)



Thursday, May 30, 2002 (continued)

**A095180 -- The People v. Alvin Ray Minniefield.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A091833 -- The People v. Shepard Scott Sanders.**

**A093545 -- In re Shepard Scott Sanders, on Habeas Corpus.**

The judgment is affirmed. The petition for habeas corpus is denied. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A098255 -- Janette W. v. Superior Court of the County of Solano;  
Solano County Health and Social Services Department, R.P.I.**

**A098256 -- Michael L. v. Superior Court of the County of Solano;  
Solano County Health and Social Services Department, R.P.I.**

The petitions for extraordinary relief are denied on the merits. (Cal. Const., art. no. VI, § 14 *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the permanency planning hearing is set for June 10, 2002, our decision is immediately final as to this court. (Cal. Rules of Court, rule 24(d).) Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Division Four

**A095923 -- The People v. Derrick Cooper.**

The sentence is vacated and the matter is remanded for resentencing in accordance with the views expressed in this opinion. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A094709 -- The People v. Ellis Ingram McDonald.**

The judgment is reversed. Kay, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A091669 -- The People v. Johnny Williams.**

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Friday, May 31, 2002

Division One

**A093960 -- In re Skyler C., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Services Department v. Robert C.**

The order of the juvenile court terminating appellant's parental rights is affirmed. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A092213 -- Mark Lewis et al. v. John Crane, Inc.**

**A093411 -- Mark Lewis et al. v. John Crane, Inc.**

The judgment in favor of Lewis is increased to \$1,026,842 and, as so modified, is affirmed. The trial court's October 27, 2000 order awarding expert witness fees is affirmed. Respondents and appellants, Mark Lewis and Shirley Hackett, shall recover their costs on appeal. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Partial Publication.)

**A095350 -- The People v. William Thomas Page.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

**A095778 -- Premier Valley Foods, Inc. v. Del Monte Corporation.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

**A092142 -- The People v. Troy Anthony Rhodes.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

**A091096 -- The People v. Jaime Wilfredo Torres.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Friday, May 31, 2002 (continued)

Division Three

**A094449 -- The People v. Timothy McKnight.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

**A095802 -- The People v. Gregory Sherren.**

The sentence is affirmed. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A094964 -- The People v. Anthony Dean Sidbeck.**

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

**A095466 -- Loida Snyder, et al. v. Ortho-McNeil Pharmaceuticals, et al.**

The judgments of dismissal in favor of Ortho and Turner are affirmed. Appellants shall pay both respondents' costs on this appeal. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Division Four

**A095578 -- The People v. Nicholas Jose Diaz.**

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

**A094642 -- The People v. Johnny Vincent Garcia.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

**A093535 -- The People v. David Leon Garner.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Friday, May 31, 2002 (continued)

**A094224 -- In re the Marriage of Virginia and Paul Grigorieff.**

The trial court's order is affirmed. The parties are to bear their own costs.  
Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

**A097154 -- In re the Marriage of Julianne and Tibor Major.**

The order is affirmed. Respondent's request for sanctions is denied.  
Appellant to pay costs on appeal. Reardon, J. We Concur: Kay, P.J., Sepulveda,  
J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Friday, May 31, 2002

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Sepulveda, Acting P.J. and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Shelley Aldridge, Bailiff.

A092481      People

v.

Daniel Alas

Cause called. Both counsel confirmed waiving P.J. Kay's presence on the bench. Hilda Scheib argued for appellant Alas. Ryan McCarroll argued for respondent. Cause submitted.

At this point, the court reconstituted itself from Sepulveda, Acting P.J. and Rivera, J. to Reardon, Acting P.J. and Rivera, J.

A087190      Thelma Walker

v.

CCSF Housing Authority

Cause called. Both counsel confirmed waiving P.J. Kay's presence on the bench. Evelio M. Grillo argued for appellant CCSF. Andrea Adam Brott argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A092278      Golden Gateway Center

v.

Jennifer Herman

Cause called. Glenn Zwang argued for appellant Center. Francisco G. Torres argued for respondent. Cause submitted.

A095228 Insurance Commissioner of California  
v.  
Golden Eagle Insurance Company  
Cost Management Systems, Inc. et al.  
Cause called. Timothy L. Hamilton argued for appellants Cost et al. Kelly K. Beck argued for respondent. Cause submitted.

A092101 In re the Marriage of Aronoff  
Diana Dunkelis Aronoff  
v.  
Mark David Aronoff  
Cause called. In pro per appellant Diana Aronoff argued. Edward Hilario teleargued for respondent. Cause submitted.

The Court adjourned at 11:41 a.m.

Friday, May 31, 2002 (continued)

Division Five

**A094730 -- James Turner v. Dixon's Restaurant et al.**

The judgment is reversed and the matter remanded with directions to restore the case to the civil active list for prompt disposition. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A096485 -- In re Shante U., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Children and Family Services v. Fasa U.**

The dispositional order is affirmed. Jones, P.J. I concur: Stevens, J. (See concurring opinion by Gemello, J.) (Not for Publication.)